

REMARKS

Claims 1-49 are pending in the present application. Applicant respectfully traverses the restriction requirement for the reasons set out below. Reconsideration of the claims is respectfully requested.

I. 35 U.S.C. § 121

The Office Action requires a restriction to one of the following sets of claims:

- I. Claims 23-33 and 34-46;
- II. Claims 1-22 and 47-49.

Applicant respectfully traverses the restriction requirement and provisionally elects group II, claims 1-22 and 47-49.

Applicant respectfully submits that Examiner has not made out a *prima facie* case for restriction. Though Examiner has made a statement that the claims of the present application are distinct, Examiner has not averred that the inventions are independent. The statute authorizes restriction requirements only where the claimed inventions are both "independent" and distinct. 35 U.S.C. § 121. The rules similarly require that the claimed inventions be both independent and distinct for a restriction requirement to be imposed. 37 C.F.R. §§ 1.141(a), 1.142(a). Only when the two or more inventions are in fact independent should an applicant be required to restrict the claims to but one of such independent inventions. MPEP § 806.04. *PAT 50*

MPEP § 806.04(B) addresses independent inventions. This section states,

Where the two inventions are process and apparatus, and the apparatus cannot be used to practice the process or any part thereof, they are independent. A specific process of molding is independent from a molding apparatus which cannot be used to practice the specific process.

In the current case, the claims from group I are directed to an apparatus that can be used to practice the process of the group II claims. For example, claim 23 (from group I) describes an apparatus for providing access to a data stream via a data stream splitter, while claim 1 (from group II) describes a method of sharing a data stream among multiple devices that is consistent with the apparatus of claim 23. In fact, claim 2 specifically mentions the use of a data stream

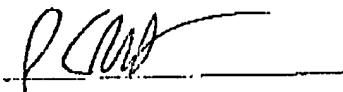
splitter as recited in claim 23. It is therefore respectfully submitted that the apparatus claims of group I can be used to practice the process of the claims of group II. Because of this, the claims are not independent according to MPEP § 806.04(B). Since the claims are believed not to be independent, Applicant respectfully submits that restriction is not proper.

II. Conclusion

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: 1.8.03

Respectfully submitted,



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